

STATE OF MISSOURI)
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CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
TWENTY SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI

RODNEY LINCOLN,)
)
 Movant,)
) Cause No. 22821-2021
 vs.) Honorable Robin Ransom Vannoy
) Division No. 3
 STATE OF MISSOURI,)
)
 Respondent.)

RESPONDENT’S MOTION TO DISMISS MOVANT’S MOTION FOR RELEASE

COMES NOW the State of Missouri, by and through Assistant Circuit Attorney Edmund J. Postawko, and, pursuant to Rule 29.17 of the Rules of Criminal Procedure and Rule 55.27(a)(6) of the Rules of Civil Procedure, hereby moves to dismiss movant’s “Motion for Release” pursuant to section 547.037 RSMo for the reason that movant’s motion fails to state a claim for which relief can be granted. In support of its motion, the State of Missouri states as follows:

Facts

1. On April 27, 1982, at approximately 4:00 am, movant killed Joanne Tate (“Joanne”) by stabbing her in the chest with a steak knife. He also kicked her repeatedly in her chest and shoved a broom into her rectum through many of her organs up to her neck. This incident took place in the apartment Joanne shared with her two daughters.

2. Joanne’s seven-year-old daughter Melissa Davis (“Melissa”) woke up to the sound of her mother screaming. Melissa was in her own bed in the bedroom she

shared with her sister. Melissa observed her mother on the carpeted floor of the bedroom near the door leading into the kitchen. Movant picked Melissa up out of her bed and carried her into Joanne's bedroom. He put Melissa on the bed, removed her clothing, and tried to kiss her. When she resisted, he stabbed her arms, left hand, shoulders, and chest with a steak knife. He then cut her vaginal area all the way to her tailbone with a butcher knife. Melissa pretended to play dead, hoping movant would stop cutting her. Movant took the butcher knife into the kitchen to wash it off. While movant was in the kitchen, Melissa snuck back into her bedroom and hid underneath her sister's bed.

3. Movant then located Melissa's four year-old sister, Renee Tate ("Renee"). Movant cut Renee's throat, severing her common carotid artery. Renee's neck was cut all the way to the vertebrae in the back of her neck.

4. At some point Melissa covered herself with a blue blanket. After movant left the apartment, Melissa made her way to the kitchen to get some water. Melissa attempted to get Renee to drink some of the water.

5. Joanne, Melissa and Renee all lost a significant amount of blood. There was no indication that movant suffered any wounds during the incident.

6. The three victims were discovered at approximately 10:30 am. Melissa and Renee were in their beds and covered with blankets, so their injuries were not immediately visible. Nathaniel Tate, Joanne's, "hollered" and "screamed" several times at Melissa, "Who did this?" *See* Transcript 402, lines 7-12. Melissa responded by giving him the name "Bill" so that Nathaniel would stop yelling. At trial, Melissa testified that she gave the name Bill because "[she] was so sick of hurting, and everybody was bugging me for a name, so I gave them a name Bill." *See* Tr. 355, lines 21-22. In response to the

question “Are Bill and Rodney the same person?” Melissa responded “Yes, sir.” *See* Tr. 385 lines 20-21.

7. Melissa and Renee were both transported to Cardinal Glennon Children’s Hospital. During the course of treatment for their injuries sexual assault exams were performed, and sexual assault kits were collected from both girls. A number of hairs were located and collected from the Renee’s perineum area.

8. Melissa consistently revealed there was only one person who committed the attack. Melissa’s description of the killer helped police draw a composite sketch that led police to movant. Melissa identified movant in a photograph and in a line-up as the man who killed her mother and who hurt her and Renee.

9. Movant was convicted by a jury of one count of Manslaughter for the death of Joanne, and two counts of Assault in the First Degree for the attacks on Melissa and Renee. Movant received life sentences for each of the counts of Assault in the First Degree, and 15 years for the count of Manslaughter. All three sentences were ordered to be run consecutively.

10. Pursuant to a “Stipulation to Post-Conviction DNA Testing” a number of items seized from the scene of this incident were sent to Serological Research Institute for DNA testing pursuant to section 547.035, RSMo. This testing revealed:

a. No semen was found on any of the swabs collected from Joanne, Melissa or Renee. No DNA evidence was obtained from any of these swabs.

b. While a trace amount of male DNA was detected in the left and right hand fingernail scrapings collected from Joanne, DNA testing revealed no YSTR results. No individuals could be included or excluded through this testing.

c. Two human hairs and one animal hair were collected from the perineum of Renee. Mitochondrial DNA testing revealed that for one of these human hairs Joanne, Melissa, Renee and movant were excluded as possible sources, and for the other human hair movant was excluded as a possible source.

d. A hair was collected from the blue blanket seized from Melissa's bed. At trial the blanket was identified as State's Exhibit 22a and the single hair was identified at trial as State's Exhibits 22b and 22c. Mitochondrial DNA testing revealed that this hair could not have originated from Joanne, Melissa, Renee or movant. This hair came from a different person than the perineum hairs collected from Renee.

11. The St. Louis Circuit Attorney's Office is not contesting the use of mitochondrial DNA testing or the mitochondrial DNA results obtained by the Serological Research Institute.

12. Movant has filed a "Motion for Release" pursuant to Section 547.037, RSMo. Movant argues that the DNA results which exclude him as the source of the hair evidence establishes that he is innocent of the crimes against the victims.

Argument

13. Section 547.037, RSMo, provides "[i]f testing ordered pursuant to section 547.035 demonstrates a person's innocence of the crime for which the person is in custody, a motion for release may be filed in the sentencing court." Section 547.037.1. If the prosecutor opposes the movant's release, a hearing must be held at which "[t]he movant shall have the burden of proving all the allegations of the motion by a preponderance of the evidence." Section 547.037.4. If the motion court finds the DNA testing "ordered pursuant to Section 547.035 demonstrates the movant's innocence of the

crime for which he or she is in custody, the court shall order the movant's release from the sentence for the crime for which the testing occurred. Otherwise, relief shall be denied the movant.” Section 547.037.5. *Bey v. State*, 272 S.W.3d 378 (Mo.App.E.D. 2008).

14. The DNA evidence which movant relies upon in his motion concerns the hairs found on the perineum of Renee and a hair found on the blanket in the victim’s home. Movant argues that since DNA testing has excluded him as the source of these hairs his innocence for the crimes against Joanne, Melissa and Renee is proven. Movant, however, has focused just on the DNA test results and has failed to reveal why or how DNA analysis of the hairs in question proves movant is innocent.

15. As in any criminal case, each piece of evidence must be viewed in context. The context of a piece of evidence may reveal it to be immaterial to the crime, a “smoking gun” which conclusively reveals the true perpetrator of the crime, or something in between which may warrant examination, but by itself does not solve the crime. For example, in *Bey v. State*, 272 S.W.3d 378 (Mo.App.E.D. 2008), Bey was convicted of a forcible rape which occurred in 1988. Seminal fluid and spermatozoa were found on victim’s panties and the vaginal swabs obtained from victim immediately after the incident. At the time of the incident DNA testing was not available. Bey was convicted and sentenced to a total of 85 years in prison. In 2001 Bey filed a motion requesting post-conviction DNA testing. DNA analysis of the panties and vaginal swabs excluded Bey as a possible source of the seminal fluid. Bey filed a motion for release with much the same argument as movant in this case – the DNA did not match so that proves he must be innocent. After review of the facts and circumstances of Bey’s case the trial

court found that excluding Bey as the source of the biological evidence did not prove Bey's innocence. *See State's Exhibit A – Bey v. State*, "Findings of Fact, Conclusions of Law, Judgment and Order," submitted by the Honorable Joan Burger, dated August 7, 2007. *Bey v. State* is a good example of why more than just the DNA results of biological evidence from a crime scene needs to be examined. It is extremely important to analyze biological evidence and determine what significance, if any, it has in proving who committed the crime.

16. In this case, for the hairs from Renee's perineum and the hair from the blue blanket to prove movant's innocence, it must be established that these hairs could only have come from the perpetrator of the attack on Joanne, Melissa and Renee. Movant has produced no such evidence.

17. The hair found on Renee's perineum is immaterial to identifying the perpetrator of the crimes for which movant was convicted. There is no evidence found in the trial transcript or any police reports which shows that the source of the hair on Renee's perineum was the hair of the perpetrator of the crimes. The perineum hair was not used by the State at movant's trial. *See* "Index to Exhibits," Trial Transcript Volume 2, pages iii to xiv. It may be reasonably inferred that this hair was not used at trial because the parties already knew these hairs were not relevant to solving this crime. St. Louis Metropolitan Police Department Lab Report #204503-1 (Movant's Exhibit #3) dated 6/11/1982 established that the perineum hair did not belong to movant. There is no evidence in the trial transcript or police reports which demonstrates how or when this hair came in contact with Renee's perineum. The facts of the case reveal a very bloody crime scene, and two very bloody children who were alone in their house for hours after the

crime occurred. These victims could have come into contact with any number of items during that time period, including stray hairs. This is demonstrated by the fact that, in addition to the human hairs which were found on Renee's perineum, the report from Serological Research Institute revealed there was also an animal hair. For movant to argue that the source of the hair found on Renee's perineum was from the true perpetrator of the crime, then movant is must also argue that an animal was involved in the attack on Renee.

18. The DNA results obtained by Serological Research Institute produced different results for different hairs obtained from Renee's perineum. Item 3 consisted of one human hair and one animal hair. Mitochondrial DNA testing of the human hair excluded Renee, Melissa, Joanne and movant as the possible source. Item 4, also recovered from Renee's perineum, consisted of a long, brown human hair. Mitochondrial DNA testing of this hair excluded movant as a possible source, but also found that the hair could have originated from Renee, Melissa or Joanne. The three hairs located on Renee's perimeum were from three different sources.

19. The DNA results of the various hairs recovered from Renee's perineum demonstrate that at some point during the night of the crimes in question Renee was exposed to multiple sources of stray hairs. The timing and circumstances of how these hairs came to rest on Renee are unknown. Did she rub against her sister or mom? Did they fall off a blanket they been attached to for months? Did they transfer from the floor to Melissa to Renee? Had these hairs been in the carpeting for days, months or even years? There is no evidence which answers these questions, just as there is no evidence that shows these hairs must have been deposited by Renee's attacker. Not only is contact

with stray hairs a possibility, the evidence shows it is a certainty in this case. Results showing that the perineum hair excludes movant as a possible source does not demonstrate movant is innocent of the crimes for which he was convicted.

20. Movant argues that the pubic hair found on the blue blanket was a “key” piece of evidence for the State. The record in this case demonstrates otherwise. There is nothing in the record to support that the State promoted a theory that the pubic hair found on this blanket belonged to the perpetrator of the crime. There is also nothing in the trial transcript or police reports to indicate that the pubic hair conclusively belonged to movant, and the State presented no such evidence. Donna Becherer, Joseph Crow and Harold Messler – the three laboratory witnesses who testified for the State at trial – never testified that the hair belonged to movant. Becherer testified merely as a chain-of-custody witness for the pubic hair collected from movant. *See* Trial Transcript pages 630-632. Crow testified concerning his examination of the blue blanket and his collection of the pubic hair found on the blue blanket. *See* Trial Transcript pages 632-642. Messler testified that he examined the pubic hair from the blue blanket along with known pubic hairs from Joanne, movant and 36 other individuals. *See* Trial Transcript pages 642-655, 717-731. Messler testified that the purpose of his examination of these hairs was to see if they “were comparable in appearance or if they were definitely different and not the same.” *Id.* at 646. The crux of Messler’s testimony was that movant’s pubic hair was consistent with the pubic hair from the blue blanket. Messler explicitly testified that he did not have an opinion as to the frequency in which a comparable pubic hair would be found in the Caucasian population. Messler never testified that the pubic hair belonged to movant. It strains reason and common sense to

argue that this limited evidence was a “key” part of the State’s case, and the testimony of these witnesses certainly does not establish that the pubic hair from the blue blanket belonged to the attacker.

21. Movant’s characterization of Messler’s testimony as “faulty” and “flawed” is misleading and not supported by the record. Messler’s testimony addressed his visual comparison of the pubic hair recovered from the blue blanket with a pubic hair recovered from movant. He found the two to be similar. Messler never declared that movant was the source of this hair, nor did he make any estimates or predictions of likelihood. The mitochondrial DNA analysis which excludes movant as the source of the pubic hair does not mean that movant’s hair and the blanket hair don’t have consistent visual characteristics.

22. Crow testified that, in addition to the pubic hair, he recovered in excess of 50 hairs from the blue blanket. *See* Trial Transcript page 635. It was not possible for the St. Louis Police Laboratory to determine how much time has elapsed between a hair separating from a human host until it is examined by the lab. *See* Trial Transcript page 652. Just as with the perineum hair discussed earlier, there is no evidence showing, and no way of knowing, how the pubic hair got on the blue blanket or how long it had been there. The presence of numerous hairs of undetermined origin found on a blanket does not mean that any one of the hairs was left by the perpetrator of this crime. Movant has again failed to show that DNA evidence which excludes movant as the source of the pubic hair on the blue blanket also demonstrates movant’s innocence.

23. The mitochondrial DNA results of the hairs revealed that the hair recovered from Renee’s perineum (marked Item #3), which excluded Renee, Melissa,

Joanne and movant, was from a different source than the pubic hair recovered from the blue blanket, which also excluded Renee, Melissa, Joanne and movant as possible sources. All the evidence in this case concludes that there was one perpetrator of the crimes committed against the victims, yet movant is now taking the position that there were at least two attackers without offering any evidence that any of the hairs tested were left at the scene by the perpetrator. What the facts and circumstances in this case, combined with these DNA test results, reveals is that scattered throughout the victim's cluttered, carpeted home were many hairs of an unknown age and of unknown origin. These hairs came from humans and animals, and ended up on blankets and people. Exclusion of movant as the source of any hair found in the victim's home does not demonstrate movant's innocence. Likewise, proving a person is the definitive source of any hair found in the victim's home would not prove that person's guilt.

24. In movant's "Brief in Support of Motion for Release" movant takes the position that "No evidence collected at the crime scene contains Mr. Lincoln's DNA, thus establishing clearly that he is innocent." There is no standard in criminal law in which DNA evidence matching an accused to a crime is mandatory in order to sustain a conviction. Clearly there is no such requirement.

25. While the record clearly shows that movant has failed to explain how the pubic hair testimony is relevant to his motion filed pursuant to Section 547.037, should this Honorable Court order a hearing it is anticipated that Melissa will testify. It is further anticipated that Melissa's testimony will include that the movant had no contact with the blue blanket the night of the crimes.

26. In movant's "Motion for Release" and "Brief in Support of Motion for Release" movant spends considerable time attacking Melissa's identification of movant as the perpetrator. Movant also includes numerous exhibits in an attempt to attack eyewitness identification evidence. This argument by movant must be disregarded in its entirety. The State requests that movant's Exhibits numbered 6, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 be disregarded by this Honorable Court as they are all irrelevant to whether DNA testing has proven movant's innocence.

27. The exclusive purpose of motions filed pursuant to Sections 547.035 and 547.037 revolve around the role of DNA evidence which was not available at trial. As stated in *Bey v. State*, 272 S.W.3d 378 (Mo.App.E.D. 2008), "the motion court correctly found Sections 547.035 and 547.037 do not give the movant the right to attack witness credibility from the trial, but rather give the movant the opportunity to demonstrate his innocence by DNA testing." Movant's argument that Melissa's testimony concerning her identification of movant is "flawed" is merely an attempt to re-open cross-examination of a victim long after the trial is complete.

28. In addition to being improper subject matter for a motion filed pursuant to Section 547.037, the use of this type of evidence to attack eyewitness evidence testimony is improper. In Missouri, trial court rulings to exclude expert testimony on eyewitness identification have consistently been upheld. *State v. Lawhorn*, 762 S.W.2d 820 (Mo. Banc 1988); *State v. Whitmill*, 780 S.W.2d 45 (Mo. Banc 1989); *State v. Simpson*, 793 S.W.2d 182 (Mo. App. E.D. 1990); *State v. Hill*, 854 S.W.2d 486 (Mo. App. E.D. 1993). Movant dedicates eight of twenty pages of his "Brief in Support of Motion for Release" to attack the reliability Melissa's identification. The movant's arguments are the material

for cross-examination and closing argument. Movant had the opportunity at trial to cross-examine all the State's witnesses, including Melissa, and to challenge Melissa's identification during closing argument. The evidence and expert witnesses movant cites to support his attack on eyewitness identification evidence serve only to invade the province of the jury. "[S]uch matters are within the general realm of common experience of members of a jury and can be evaluated without an expert's assistance." *Lawhorn*, 762 S.W.2d at 823. Movant's attempts to attack the credibility of Melissa's identification through expert testimony should be disregarded.

29. The mitochondrial DNA results obtained by testing certain hairs which were seized as possible evidence in the attacks on Renee, Melissa and Joanne do not demonstrate the innocence of movant. Movant has failed to demonstrate why the perineum hair and the pubic are definitively hairs from the perpetrator of the attack on Joanne, Melissa and Renee. The mitochondrial DNA testing combined with entire record of this case fails to "demonstrate the innocence" of movant. As a result movant has not even met the requirements under Section 547.037 which entitle him to file a motion for release.

30. It is respectfully requested that this Honorable Court issue "Findings of Fact and Conclusions of Law" which dismiss movant's "Motion for Release."

Respectfully submitted,

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Certificate of Service

I, the undersigned, do hereby affirm that on this 3rd day of January, 2011, a true and accurate copy of the foregoing was sent via U.S. mail to the following counsel of record:

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